



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 13, 1993

Ms. Gretchen Kuehn Bohnert
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR93-450

Dear Ms. Bohnert:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, V.T.C.S. article 6252-17a. Your request was assigned ID# 20764.

The Houston Police Department (the "department") has received a request for information relating to a former police officer. Specifically, the requestor, who represents the former police officer at issue here, seeks the following information:

1. All information contained in Joseph Kent McGowen's personnel file to include but not be limited to recruiting information, employment records, psychiatric tests and evaluations, memos, letters, applications, tests, correspondence and all other information contained in said file.
2. All information obtained and maintained by the Internal Affairs Division including but not limited to complaints, investigations, disciplinary actions, correspondence and all other information contained in said file.

You advise us that the department has released to the requestor Officer McGowen's civil service file. You object, however, to release of the remaining information, which you have submitted to us for review, and claim that section 3(a)(1) of the Open Records Act excepts it from required public disclosure.

Section 3(a)(1) excepts "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." You claim that section 143.089(g) of the Local Government Code makes the requested information confidential. We assume, then, that Officer McGowen's "personnel file" as defined in section 143.089 contains the information at issue here.¹ See Local Gov't Code § 143.089(a), (b), (c) (regarding contents of fire fighter's and police officer's "personnel file"). Section 143.098(g) makes the contents of a "personnel file" confidential and provides in pertinent part:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer.

See also Open Records Decision No. 562 (1990) at 7 (holding that section 143.089(g) would protect information reasonably related to police officer's or fire fighter's employment relationship with his or her department). Recently, this office applied for a writ of error before the Texas Supreme Court, challenging the holding of the Third Court of Appeals in Austin in a case styled *City of San Antonio v. Morales*, Cause No. 03-91-00461-CV. In that case, the court construed the scope of section 143.089(g) and the validity of Open Records Decision No. 562.

In this instance, however, we need not construe section 143.089(g) because section 143.089(e) provides the requestor a special right of access to information contained in his "personnel file." Section 143.089(e) provides:

The fire fighter or police officer is entitled, on request, to a copy of any letter, memorandum, or document placed in the person's personnel file. The municipality may charge the fire fighter or police officer a reasonable fee not to exceed actual cost for any copies provided under this subsection.

As the requestor represents Officer McGowen and requests only information contained in Officer McGowen's "personnel file," we conclude that the department must release the information submitted to us for review in its entirety pursuant to section 143.089(e) of the Local Government Code.

¹Of course, if Officer McGowen's "personnel file" does not contain the information at issue here, section 143.089(g) does not make it confidential.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Kimberly K. Oltrogge
Assistant Attorney General
Open Government Section

KKO/GCK/jmn

Ref.: ID# 20764

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